

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CASCADES CONTAINERBOARD	:	Case No. 03-CA-242367
PACKAGING - NIAGARA, A DIVISION OF	:	03-CA-243854
CASCADES HOLDING US, INC.	:	03-CA-248951
	:	
<i>and</i>	:	
	:	
INTERNATIONAL ASSOCIATION OF	:	
MACHINISTS AND AEROSPACE WORKERS	:	
DISTRICT LODGE 65, AFL-CIO	:	

**RESPONDENT’S EXCEPTIONS TO DECISION ISSUED BY
ADMINISTRATIVE LAW JUDGE PAUL BOGAS**

As the Respondent in the above-captioned case, Cascades Containerboard Packaging – Niagara, A Division of Cascades Holding US, Inc. (hereafter, the “Respondent”) hereby submits, by and through the Respondent’s Undersigned attorney, these Exceptions to the Decision (hereafter, the “Decision”) issued by Administrative Law Judge Paul Bogas (hereafter, the “Judge”) on March 17, 2020.

II. ALLEGED UNFAIR LABOR PRACTICES

A. BACKGROUND FACTS

Exception No. 1: The Respondent excepts to the Judge’s finding that “Cascade, Inc.” is the entity above the holding division and other “Cascade” entities. See Decision 2, Lines 39-41.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 2: The Respondent excepts to the Judge’s finding that employees initiated a union organizing campaign at the Respondent’s facility. See Decision 2, Lines 46-47.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 3: The Respondent excepts to the Judge’s finding that the Complaint focuses on actions occurring “immediately” after the Union’s organizing campaign succeeded. See Decision 3, Lines 26-27.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 4: The Respondent excepts to the Judge’s finding that, during meetings with employees concerning profit sharing payments, the Respondent told employees that the profit sharing payments had been changed due to the current situation at the facility, and that when asked, the Respondent told employees that the situation that led to the change was the advent of the Union. See Decision 3, Lines 13-16.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 5: The Respondent excepts to the Judge’s finding that the Respondent “abruptly ceased” a practice of displaying profit information for the facility. See Decision 3, Lines 17-18.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 6: The Respondent excepts to the Judge's finding that employees used profit information posted at the facility to estimate the amount of profit share they could expect to receive. See Decision 3, Lines 19-20

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 7: The Respondent excepts to the Judge's finding that janitorial work was previously performed by an employee-janitor who was in the bargaining unit. See Decision 3, Lines 25-26.

Grounds: The Judge's determination is unsupported by the evidentiary record.

Exception No. 8: The Respondent excepts to the Judge's finding that the Respondent removed janitorial work from the bargaining unit without first giving the Union notice and an opportunity to bargain. See Decision 3, Lines 28-29.

Grounds: The Judge's finding mischaracterizes the evidentiary record and is unsupported by the evidentiary record and legal precedent.

B. RESPONDENT LAYS OFF NEWLY UNIONIZED EMPLOYEES

Exception No. 9: The Respondent excepts to the Judge's finding that Joseph Zilbauer testified that the Respondent had already made the decision to impose the layoffs at the time it sent the email notifying the Union of the layoffs. See Decision 4, Lines 14-16.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 10: The Respondent excepts to the Judge’s finding that the Respondent “attempted to give the impression” that its officials did not know Union Representative Warner, and “later backtracked from that claim”. See Decision 5, FN 5.

Grounds: The Judge’s finding mischaracterizes the evidentiary record, and is unsupported by the evidentiary record.

C. PROFIT-SHARING PAYMENTS

1. HISTORY OF PROFIT-SHARING PAYMENTS

Exception No. 11: The Respondent excepts to the Judge’s finding that the Respondent made semi-annual profit-sharing plan payments to employees for over twenty years. See Decision 6, Lines 8-9.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 12: The Respondent excepts to the Judge’s finding that the amounts of profit share disbursed to employees are calculated based upon “variable” factors including the profits of the facility and “other compensation” the Respondent paid to employees during the relevant period. See Decision 6, Lines 12-15.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 13: The Respondent excepts to the Judge’s finding that the Respondent informed employees that the payments were calculated by setting aside a percentage of the facility’s profits for distribution to employees, and then

determining each employee's share of the set-aside amount based on that employee's regular earnings during the relevant time period. See Decision 6, Lines 15-18.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 14: The Respondent excepts to the Judge's finding that Zilbauer would check employees' earnings to ensure that profit-sharing payments were based on the correct information. See Decision 6, Lines 19-21.

Grounds: The Judge's finding mischaracterizes the evidentiary record, and is unsupported by the evidentiary record.

Exception No. 15: The Respondent excepts to the Judge's finding that, on two occasions before the Union was certified, the Respondent informed employees that it was reducing the portion of the Niagara facility's profits that would be set aside for distribution to employees. See Decision 6, Lines 21-23.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 16: The Respondent excepts to the Judge's finding that Zilbauer testified that the Respondent considers the profit sharing program a gift. See Decision 6, Lines 30-31.

Grounds: The Judge's finding mischaracterizes the evidentiary record.

Exception No. 17: The Respondent excepts to the Judge's finding that Zilbauer stated that the profit sharing payments were a program of the head office of "Cascade, Inc." in Canada. See Decision 6, Lines 32-33.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 18: The Respondent excepts to the Judge's finding that Zilbauer "conceded" that the Respondent was responsible for making sure that the wage information used to "determine" profit sharing payments to employees was accurate. See Decision 6, Lines 33-34.

Grounds: The Judge's finding mischaracterizes the evidentiary record, and is unsupported by the evidentiary record.

2. JUNE / JULY 2019 PROFIT-SHARING PLAN PAYMENTS

Exception No. 19: The Respondent excepts to the Judge's finding that supervisors and other officials stated that the profit-sharing plan payments had been changed because of the current situation or "culture" at the facility. See Decision 7, Lines 18-20.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 20: The Respondent excepts to the Judge's finding that the procedure followed when supervisors met with employees to discuss the June 2019 profit sharing payments diverged from the Respondent's prior practice. See Decision 7, Lines 23-26.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 21: The Respondent excepts to the Judge's finding that Pozzobon communicated to employees that profit-sharing payments were being changed at the

facility because of the “Union situation”, as communicated to Zilbauer by Guillemette. See Decision 7, Lines 29-33.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 22: The Respondent excepts to the Judge’s finding that Pozzobon told employee Cracknell that profit sharing was adjusted due to the Union. See Decision 7, Lines 33-37.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 23: The Respondent excepts to the Judge’s finding that Pozzobon told employee Butski that profit sharing was reduced “because of the Union”. See Decision 7, Lines 37-41.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 24: The Respondent excepts to the Judge’s findings that Butski’s testimony was “clear and certain” and that Pozzobon did not deny making a statement about the Union to Butski. See Decision 7, FN 9.

Grounds: The Judge’s findings are unsupported by the evidentiary record.

Exception No. 25: The Respondent excepts to the Judge’s finding that Butski’s testimony was uncontroverted, and the Judge’s decision to therefore credit Butski’s testimony. See Decision 8, FN 9.

Grounds: The Judge’s findings are unsupported by the evidentiary record.

Exception No. 26: The Respondent excepts to the Judge’s findings that Pozzobon was evasive during his testimony, and that Pozzobon never denied that he told Cracknell that the employees’ profit sharing payments had been affected because of the Union. See Decision 8, FN 9.

Grounds: The Judge’s findings mischaracterize the evidentiary record, and are unsupported by the evidentiary record.

Exception No. 27: The Respondent excepts to the Judge’s findings that Cracknell’s testimony was “clear, certain, and credible”, that Cracknell’s testimony concerning his conversation with Pozzobon was un rebutted, and that Cracknell’s testimony should be credited over Pozzobon’s testimony, “given Pozzobon’s evasiveness.” See Decision 8, FN 9.

Grounds: The Judge’s findings mischaracterize the evidentiary record, and are unsupported by the evidentiary record.

Exception No. 28: The Respondent excepts to the Judge’s findings that it was reasonable for employee Reed to conclude that recent union activity was the “situation” that Pozzobon was attributing the change in profit-sharing payments to, because this was the first profit-sharing payment after the Union was certified, because the Respondent “diverged from its usual procedure”, because Pozzobon stated that payments at other facilities were not being adjusted, and because no other

“current situation” was identified by Pozzobon as the reason for the “change”. See Decision 8, Lines 9-15.

Grounds: The Judge’s findings are unsupported by the evidentiary record.

**3. RESPONDENT CEASES CHARING THE MONTHLY PROFIT
INFORMATION THAT EMPLOYEES RELIED ON TO ESTIMATE
THE PROFIT-SHARING PAYMENTS**

Exception No. 29: The Respondent excepts to the Judge’s heading, which states that employees relied upon the monthly profit information to estimate the profit-sharing payments. See Decision 8, Lines 19-20.

Grounds: The Judge’s heading is unsupported by the evidentiary record.

Exception No. 30: The Respondent excepts to the Judge’s finding that employees used monthly profit information to estimate the amount of their next semi-annual profit-sharing payment. See Decision 8, Lines 21-22.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 31: The Respondent excepts to the Judge’s finding that the flyer about Normand Laporte “expressed skepticism about Laporte’s academic history”. See Decision 9, Lines 10-12.

Grounds: The Judge’s finding mischaracterizes the evidentiary record and is unsupported by the evidentiary record.

Exception No. 32: The Respondent excepts to the Judge’s finding that the flyer was not inaccurate because it “did not claim that Laporte owned” both residences listed on the flyer. See Decision 9, Lines 10-12, FN 10.

Grounds: The Judge’s finding mischaracterizes the evidentiary record.

Exception No. 33: The Respondent excepts to the Judge’s finding that the Respondent does not assert that the Union claimed responsibility for the flyer. See Decision 9, Line 20.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 34: The Respondent excepts to the Judge’s finding that the Respondent did not have a reasonable basis to conclude that the Union, or anyone acting on its behalf, was responsible for the flyer. See Decision 9, Lines 31-33.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 35: The Respondent excepts to the Judge’s findings that the Respondent misrepresented the record, and that Reed had not stated any knowledge about who created or distributed the flyer during his testimony. See Decision 9, FN 11.

Grounds: The Judge’s findings are unsupported by the evidentiary record.

Exception No. 36: The Respondent excepts to the Judge’s finding that Laporte testified that the April 29, 2019 memorandum was the notice that he received

directing him to cease sharing monthly profit figures with employees. See Decision 10, Lines 15-16.

Grounds: The Judge's finding mischaracterizes the evidentiary record, and is unsupported by the evidentiary record.

Exception No. 37: The Respondent excepts to the Judge's finding that the April 29, 2019 memorandum did not direct Laporte to cease sharing profit information. See Decision 9, Lines 16-18.

Grounds: The Judge's finding mischaracterizes the evidentiary record and is unsupported by the evidentiary record.

Exception No. 38: The Respondent excepts to the Judge's finding Laporte was "a biased and highly unreliable witness". See Decision 9, Lines 30-31.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 39: The Respondent excepts to the Judge's findings that Laporte "strained unconvincingly" to distance himself from the decision to cease sharing profit information, and that the April 29, 2019 memorandum did not direct Laporte to stop sharing the profit information. See Decision 10, Lines 31-36.

Grounds: The Judge's findings mischaracterize the evidentiary record, and are unsupported by the evidentiary record.

Exception No. 40: The Respondent excepts to the Judge's finding that if "Cascades officials beyond the Niagara facility" had made the decision to stop sharing profit

information at the Niagara facility, they did so in response to Laporte's complaints blaming the Union for the flyer. See Decision 10, Lines 43-46.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 41: The Respondent excepts to the Judge's finding that Laporte's "effort to avoid responsibility became even more far-fetched" when Laporte testified that he would not be able to share the information himself, because he no longer had access to it. See Decision 11, Lines 1-6.

Grounds: The Judge's finding mischaracterizes the evidentiary record and is unsupported by the evidentiary record.

Exception No. 42: The Respondent excepts to the Judge's finding that it was "implausible" that Laporte would lack access to profit information for the facility. See Decision 11, Lines 6-10.

Grounds: The Judge's finding mischaracterizes the evidentiary record, and is unsupported by the evidentiary record.

Exception No. 43: The Respondent excepts to the Judge's finding that Laporte claimed that he had never asked for the facility's profit information. See Decision 11, Lines 10-12, FN 12.

Grounds: The Judge's finding mischaracterizes the evidentiary record, and is unsupported by the evidentiary record.

Exception No. 44: The Respondent excepts to the Judge’s finding that “Laporte’s willingness to make such an implausible claim under oath reflects poorly on his honesty and reliability as a witness” . See Decision 11, Lines 13-14.

Grounds: The Judge’s finding mischaracterizes the evidentiary record and is unsupported by the evidentiary record.

Exception No. 45: The Respondent excepts to the Judge’s finding that Respondent’s counsel “helped Laporte change his answer” regarding Laporte’s access to profit information during re-direct examination. See Decision 11, Lines 14-20.

Grounds: The Judge’s finding mischaracterizes the evidentiary record, and is unsupported by the evidentiary record.

Exception No. 46: The Respondent excepts to the Judge’s finding that Laporte and the Respondent were responsible for ceasing the practice of sharing monthly facility profit information with employees. See Decision 11, Lines 22-24.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

4. UNION INFORMATION REQUEST REGARDING PROFIT SHARING

Exception No. 47: The Respondent excepts to the Judge’s findings that the Respondent told employees that their profit-sharing plan checks had been changed due to the current situation at the Niagara facility, and that Pozzobon and Guillemette

had stated that the Union was the reason for the change. See Decision 11, Lines 28-32, 36-37.

Grounds: The Judge's findings mischaracterize the evidentiary record and are unsupported by the evidentiary record.

5. CHANGE TO THE PROFIT-SHARING PLAN PAYMENTS, WHO MADE THE CHANGES, AND ADVERSE INFERENCE

Exception No. 48: The Respondent excepts to the Judge's finding that Pozzobon told employees that the June / July 2019 profit sharing plan payments had been reduced or changed. See Decision 13, Lines 4-6.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 49: The Respondent excepts to the Judge's finding that Cracknell and Reed received about \$1,000 less in profit-sharing than they should have received. See Decision 13, Lines 6-9, 32-33.

Grounds: The Judge's finding mischaracterizes the evidentiary record, and is unsupported by the evidentiary record.

Exception No. 50: The Respondent excepts to the Judge's finding that the Respondent presented no testimony or evidence to prove that the profit-sharing plan payments had not been changed . See Decision 13, Lines 9-12.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 51: The Respondent excepts to the Judge's finding that there was a change to the profit-sharing plan payments that the Respondent disbursed to employees in June / July 2019. See Decision 13, Lines 12-14.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 52: The Respondent excepts to the Judge's denial of the Respondent's motion to dismiss the Second Consolidated Complaint. See Decision 13, FN 15

Grounds: The Judge's denial is unsupported by the evidentiary record and legal precedent.

Exception No. 53: The Respondent excepts to the Judge's finding that Zilbauer knew there was going to be a change to the profit-sharing plan payment, but did not notify the Union. See Decision 13, Lines 19-20.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 54: The Respondent excepts to the Judge's findings that the Respondent failed to produce information "properly sought" in the General Counsel's subpoena duces tecum, including the formulas / calculations that the Respondent used to arrive at the payment amounts and the Respondent's internal communications regarding the payments. See Decision 13, Lines 26-30.

Grounds: The Judge's findings are unsupported by legal precedent.

Exception No. 55: The Respondent excepts to the Judge’s finding that the Respondent’s refusal to produce information “continued” after the Respondent’s petition to revoke the General Counsel’s subpoena was denied and the Respondent was directed to produce information. See Decision 13, Lines 30-32.

Grounds: The Judge’s finding mischaracterizes the evidentiary record and is unsupported by the evidentiary record.

Exception No. 56: The Respondent excepts to the Judge’s finding that the Respondent did not provide any information to show that the change to the profit-sharing plan was less consequential than approximately \$1,000 per employee. See Decision 13, Lines 34-35.

Grounds: The Judge’s finding mischaracterizes the evidentiary record and is unsupported by the evidentiary record.

Exception No. 57: The Respondent excepts to the Judge’s finding that the General Counsel sought sanctions against the Respondent even after the Judge had directed the Respondent to produce documents responsive to the General Counsel’s subpoena. See Decision 13-14, Lines 37-38, 1-2.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 58: The Respondent excepts to the Judge’s decision to grant the General Counsel’s motion for sanctions on the basis of his finding that “the

Respondent's contumacious refusal to produce plainly relevant records properly subpoenaed by the General Counsel". See Decision 14, Lines 2-5.

Grounds: The Judge's decision is unsupported by the evidentiary record and legal precedent.

Exception No. 59: The Respondent excepts to the Judge's drawing of an adverse inference against the Respondent on the questions of (1) whether the profit-sharing payment to unit employees were calculated based, in whole or in part, on the Niagara facility's profits and the other earnings of the particular recipient during the relevant time period; (2) whether the change made to the operation of the profit-sharing plan in June / July 2019 was substantial; and (3) whether the Respondent was responsible for the change. See Decision 14, Lines 5-14.

Grounds: The Judge's decision is unsupported by the evidentiary record and legal precedent.

Exception No. 60: The Respondent excepts to the Judge's finding that Respondent's Counsel "forwarded a variety of meritless arguments in an effort to justify its refusal to produce" subpoenaed information that was "highly relevant". See Decision 14, Lines 19-21.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 61: The Respondent excepts to the Judge’s finding that the Respondent was not entitled to refuse production of subpoenaed information on the grounds that the profit-sharing plan constituted a gift. See Decision 14, FN 17.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 62: The Respondent excepts to the Judge’s findings Counsel for the Respondent “did not initially disclose” the grounds upon which subpoenaed information was withheld even after he was instructed to produce the information, and “only did so” after a document responsive to the General Counsel’s subpoena came to light. See Decision 14, FN 17.

Grounds: The Judge’s findings are unsupported by the evidentiary record and legal precedent.

Exception No. 63: The Respondent excepts to the Judge’s rejection of the Respondent’s argument that Electrical Energy Services, 288 NLRB 925 (1988) precludes the General Counsel from subpoenaing information that is sought by an underlying request for information to which a respondent is alleged to unlawfully have refused to respond as “without merit”, and the Judge’s related finding that the General Counsel’s subpoena was “legitimate” and “not improper”. See Decision 14, FN 17.

Grounds: The Judge's holdings are unsupported by the evidentiary record and legal precedent.

Exception No. 64: The Respondent excepts to the Judge's finding that, after the Judge "spent a significant amount of time addressing the Respondent's arguments" and directed production, the Respondent "stunningly and abruptly" "changed course" and asserted that the Respondent did not possess the subpoenaed information, and the Judge's related finding that the Respondent did not raise this claim "at the outset". See Decision 15, Lines 1-9.

Grounds: The Judge's findings mischaracterize the evidentiary record and are unsupported by the evidentiary record.

Exception No. 65: The Respondent excepts to the Judge's finding that Quebec, Canada's blocking statute did not foreclose the production of information subpoenaed by the General Counsel. See Decision 15, FN 18.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 66: The Respondent excepts to the Judge's findings that counsel for the Respondent did not provide the text of the "foreign provision that supposedly justified withholding relevant evidence" and instead provided "his own paraphrasing of the foreign law." See Decision 15, FN18.

Grounds: The Judge’s findings mischaracterize the evidentiary record and are unsupported by the evidentiary record.

Exception No. 67: The Respondent excepts to the Judge’s interpretation of the holding of Societe Nationale Industrielle Aerospatiale v. United States District Court. See Decision 15, FN 18.

Grounds: The Judge’s interpretation is unsupported by legal precedent.

Exception No. 68: The Respondent excepts to the Judge’s finding that it had cited no cases in which federal courts were obligated to yield to foreign blocking statutes. See Decision 15, FN 18.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 69: The Respondent excepts to the Judge’s finding that the rationale for compelling production was stronger in the instant case than in the precedent cited by the Respondent. See Decision 15, FN 18.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 70: The Respondent excepts to the Judge’s finding that Board cases contending with state law limitations on disclosure were “analogous” to the case at bar. See Decision 15, FN 18.

Grounds: The Judge's finding is unsupported by the evidentiary record and by legal precedent.

Exception No. 71: The Respondent excepts to the Judge's finding that the Quebec blocking statute did not override the Board's authority under federal statute to obtain the subpoenaed information "highly relevant" to the allegations in the instant case. See Decision 15, FN 18.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 72: The Respondent excepts to the Judge's finding that the Respondent's assertion that the subpoenaed information was in the possession of the Respondent's corporate parent, rather than in the possession of the Respondent, was "specious". See Decision 16, Lines 1-6.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 73: The Respondent excepts to the Judge's finding that the Respondent did not show that the subpoenaed information was not in its possession. See Decision 16, Lines 6-8.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 74: The Respondent excepts to the Judge's findings that the Respondent "only resorted" to raising the question of possession of the subpoenaed

information after “losing [its] bid to justify withholding that information, and did not raise the issue possession in response to the Union’s request for information. See Decision 16, Lines 8-14.

Grounds: The Judge’s findings are unsupported by the evidentiary record.

Exception No. 75: The Respondent excepts to the Judge’s finding that the Respondent was obligated to obtain information responsive to the General Counsel’s subpoena that was not in its possession. See Decision 16, Lines 15-25.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 76: The Respondent excepts to the Judge’s finding that it did not call a custodian of records to testify with regard to the documents sought by the General Counsel’s subpoena after “assuring” the Judge it would do so. See Decision 16, Lines 26-31, FN 19.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 77: The Respondent excepts to the Judge’s finding that there was no record evidence that the Respondent made any search at all for the “highly relevant” information that was “properly subpoenaed”. See Decision 16, Lines 31-33.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 78: The Respondent excepts to the Judge’s finding that the Respondent’s conduct regarding the subpoena issues demonstrated “contempt for Board processes and authority under federal law.” See Decision 16, Lines 34-35.

Grounds: The Judge’s is unsupported by the evidentiary record.

Exception No. 79: The Respondent excepts to the Judge’s finding that “[a]llowing the Respondent to escape scrutiny of its alleged violations by withholding relevant information properly subpoenaed by the General Counsel would frustrate the purposes of the Act.” See Decision 16-17, Line 35-36, 1-2.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 80: The Respondent excepts to the Judge’s finding it was appropriate to draw an adverse inference against the Respondent. See Decision 17, Line 2.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 81: The Respondent excepts to the Judge’s findings, based upon his drawing of an adverse inference, that the profit-sharing payments were calculated based, at least in part, on a percentage of the Niagara facility’s profits and particular recipient’s earnings; that the payments made pursuant to the profit-sharing plan in June / July 2019 were substantially reduced; and that the Respondent was responsible for the reduction. See Decision 17, Lines 3-6.

Grounds: The Judge's findings are unsupported by the evidentiary record and legal precedent.

Exception No. 82: The Respondent excepts to the Judge's findings that he would have found that a substantial change was made to the profit-sharing payments, and that the payments were based on employment-related factors, based upon Zilbauer's testimony and the testimony of employees. See Decision 17, Lines 6-15

Grounds: The Judge's findings are unsupported by the evidentiary record.

Exception No. 83: The Respondent excepts to the Judge's finding that he would have found that the record indicated that the Respondent bore responsibility for the alleged change in profit-sharing plan payments. See Decision 17, Lines 16-18.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 84: The Respondent excepts to the Judge's findings that the record showed that the Respondent was responsible for ensuring that the profit-sharing payments were accurate, and was the party that told employees that the payments had been changed due to the Union. See Decision 17, Lines 20-24.

Grounds: The Judge's findings are unsupported by the evidentiary record.

Exception No. 85: The Respondent excepts to the Judge's finding that the Respondent's testimony concerning corporate control over the profit-sharing plan was "self-serving". See Decision 17, Lines 24-26.

Grounds: The Judge's finding mischaracterizes the evidentiary record, and is unsupported by the evidentiary record.

Exception No. 86: The Respondent excepts to the Judge's finding that the Respondent failed to produce evidence or testimony to support corporate control of the profit-sharing payments. See Decision 17, Lines 24-31.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 87: The Respondent excepts to the Judge's finding that, by failing to produce information subpoenaed by the General Counsel, the Respondent inhibited the General Counsel from identifying and questioning representatives of the Respondent's corporate parent concerning the profit-sharing plan. See Decision 17, Lines 31-34.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 88: The Respondent excepts to the Judge's findings that changes to the profit-sharing plan were made only at the Respondent's facility, and in response to the employees' decision to unionize. See Decision 18, Lines 1-4.

Grounds: The Judge's findings are unsupported by the evidentiary record.

Exception No. 89: The Respondent excepts to the Judge's finding that the corporate office would not have "retaliated" against the Respondent's facility "without significant input and involvement from management at the facility." See Decision 18, Lines 4-6.

Grounds: The Judge’s finding mischaracterizes the evidentiary record, and is unsupported by the evidentiary record.

Exception No. 90: The Respondent excepts to the Judge’s findings that Laporte was “unusually lacking in credibility”; that Laporte gave “implausible and contradictory testimony to avoid acknowledging responsibility for the treatment of his employees”; and therefore, that the Judge did not credit Laporte’s testimony. See Decision 18, Lines 6-14.

Grounds: The Judge’s findings mischaracterize the evidentiary record and are unsupported by the evidentiary record.

D. JANITOR WORK

1. HISTORY OF THE RESPONDENT’S USE OF AN EMPLOYEE TO PERFORM JANITORIAL WORK ON A FULL-TIME BASIS

Exception No. 91: The Respondent excepts to the Judge’s finding that the mill area of the facility cleaned by the employee-janitor was “massive”. See Decision 18, Lines 26-28.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 92: The Respondent excepts to the Judge’s finding that the Respondent’s janitor and the outside contractor “occasionally” substituted for one another. See Decision 18, Lines 30-31.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

**2. JACKSON LEAVES JANITOR POSITION AND THE RESPONDENT
PERMANENTLY ASSIGNS HIS JANITORIAL WORK TO THE
OUTSIDE CONTRACTOR**

Exception No. 93: The Respondent excepts to the Judge's finding that Warner indicated that the Union might be open to discussing "swapping" a new unit position for the janitor position, but that it was first necessary for the Respondent to restore the status quo by filling the bargaining unit position. See Decision 19, Lines 18-21.

Grounds: The Judge's finding is unsupported by the evidentiary record.

DISCUSSION

**I. SECTION 8(A)(1): RESPONDENT'S STATEMENTS THAT PROFIT-
SHARING PLAN PAYMENTS WERE BEING REDUCED AND
CHANGED DUE TO THE UNION**

Exception No. 94: The Respondent excepts to the Judge's findings that Pozzobon told unit employee Butski that his profit-sharing plan check had been reduced, and that the reason for this was the union situation at the facility; and told unit employee Cracknell that the profit-sharing plan payment had been changed as a result of the Union. See Decision 20, Lines 11-15.

Grounds: The Judge's findings are unsupported by the evidentiary record.

Exception No. 95: The Respondent excepts to the Judge's finding that a reasonable employee would tend to be coerced by the Respondent's alleged statements. See Decision 20, Lines 22-25.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 96: The Respondent excepts to the Judge's finding that the Board had found a violation of the Act in "analogous cases". See Decision 20, Lines 25-33.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 97: The Respondent excepts to the Judge's finding that the Respondent violated Section 8(a)(1) of the Act when it told employees that their profit-sharing plan payments had been reduced and changed because of the union situation at the facility. See Decision 20, Lines 35-37.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

II. SECTION 8(A)(5) AND (1): RESPONDENT LAYS OFF BARGAINING UNIT EMPLOYEES FOR TWO WEEKS BEGINNING ON MAY 20

Exception No. 98: The Respondent excepts to the Judge's finding that the Respondent violated Section 8(a)(5) of the Act by failing to notify, and bargain with, the Union before deciding to lay off bargaining unit employees. See Decision 21, Lines 10-13.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 99: The Respondent excepts to the Judge's findings that the Respondent did not give the Union notice before deciding to lay off the employees, and instead had only informed the Union of a *fait accompli*. See Decision 21, Lines 13-19; Decision 22, FN 23.

Grounds: The Judge's findings are unsupported by the evidentiary record and legal precedent.

Exception No. 100: The Respondent excepts to the Judge's finding that Zilbauer testified that the Respondent's May 14, 2019 email presented the Union with a *fait accompli*. See Decision 21, Lines 20-22, 24-26.

Grounds: The Judge's finding mischaracterizes the evidentiary record and is unsupported by the evidentiary record.

Exception No. 101: The Respondent excepts to the Judge's finding that no witness had testified that the Respondent had been willing to bargain with the Union before proceeding with the layoff. See Decision 21, Lines 22-24.

Grounds: The Judge's finding mischaracterizes the evidentiary record, and is unsupported by the evidentiary record.

Exception No. 102: The Respondent excepts to the Judge's findings that the Respondent's layoff notice did not meet the Respondent's obligations under the Act because the notice was not timely and did not provide the specifics of the layoff. See Decision 21, Lines 30-33, FN 23.

Grounds: The Judge's findings are unsupported by the evidentiary record and legal precedent.

Exception No. 103: The Respondent excepts to the Judge's finding that the Respondent gave the Union "no warning" that "a layoff was in the works". See Decision 21, Lines 42-43.

Grounds: The Judge's finding mischaracterizes the evidentiary record.

Exception No. 104: The Respondent excepts to the Judge's finding that the Board has held that "comparable, or even somewhat greater, advance notice is not timely." See Decision 22, Lines 1-6.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 105: The Respondent excepts to the Judge's finding that the Respondent's notice did not, "on its face", provide the Union a reasonable opportunity for counterarguments and proposals. See Decision 22, Lines 6-7.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 106: The Respondent excepts to the Judge's finding that the fact that the Union was newly-certified required the Respondent to provide the Union with additional notice of the layoffs. See Decision 22, Lines 7-12.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 107: The Respondent excepts to the Judge's rejection of its argument that the Union waived its statutory right to bargain over the layoffs. See Decision 22, FN 23.

Grounds: The Judge's holding is unsupported by the evidentiary record and legal precedent.

Exception No. 108: The Respondent excepts to the Judge's finding that the Respondent's layoff notice was insufficiently detailed, and thus did not provide the Union with reasonable opportunity for counterarguments or proposals. See Decision 22, Lines 14-25.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 109: The Respondent excepts to the Judge's finding that the none of the Respondent's witnesses testified that they would have been willing to bargain over the layoff if they had received the Union's cease and desist letter prior to the start of the layoff. See Decision 23, Lines 2-5.

Grounds: The Judge's finding mischaracterizes the evidentiary record and is unsupported by the evidentiary record.

Exception No. 110: The Respondent excepts to the Judge’s finding that the Respondent had unlawfully decided to proceed with the layoff at the time that it notified the Union. See Decision 23, Lines 5-7.

Grounds: The Judge’s finding mischaracterize the evidentiary record, is unsupported by the evidentiary record, and is unsupported by legal precedent.

Exception No. 111: The Respondent excepts to the Judge’s finding that the Respondent violated Sections 8(a)(5) and (1) of the Act by failing to give the Union reasonable notice and an opportunity to bargain regarding the 2-week layoff. See Decision 23, Lines 9-11.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

III. SECTION 8(A)(5) AND (1): RESPONDENT SUBCONTRACTS JANITOR’S WORK

Exception No. 112: The Respondent excepts to the Judge’s finding that the record demonstrated that, “for well over two decades” the janitorial work in the mill portion of the Niagara facility had been performed on a full-time basis by employees of the Respondent who fall within the bargaining unit. See Decision 23, Lines 28-30.

Grounds: The Judge’s finding mischaracterizes the evidentiary record, and is unsupported by the evidentiary record.

Exception No. 113: The Respondent excepts to the Judge’s findings that the Respondent subcontracted bargaining unit janitorial work after employees voted to

unionize, and did so without providing the Union with notice or an opportunity to bargain. See Decision 23, Lines 30-33.

Grounds: The Judge's findings are unsupported by the evidentiary record and legal precedent.

Exception No. 114: The Respondent excepts to the Judge's findings that the Respondent "clearly" failed to meet its bargaining obligation with respect to "this mandatory subject of bargaining", and thus violated Sections 8(a)(5) and (1) of the Act. See Decision 23, Lines 33-35.

Grounds: The Judge's findings are unsupported by the evidentiary record and legal precedent.

Exception No. 115: The Respondent excepts to the Judge's finding that the Respondent's defenses to the allegation that it unlawfully subcontracted bargaining unit work have no merit. See Decision 23, Lines 36-37.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 116: The Respondent excepts to the Judge's findings rejecting the Respondent's defense on the grounds of its past practice of declining to fill vacancies in the bargaining unit. See Decision 23-24, Lines 37-43, 1-3.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 117: The Respondent excepts to the Judge’s findings rejecting the Respondent’s defense on the grounds of its past practice of using subcontractors to perform the janitorial work at issue. See Decision 24, Lines 3-20.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 118: The Respondent excepts to the Judge’s finding that the Respondent’s subcontracting was a “substantial expansion” of its use of contractors. See Decision 23, Lines 17-18.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 119: The Respondent excepts to the Judge’s finding rejecting the Respondent’s argument, that it was not obligated to bargain with the Union because the decision to subcontract was an alteration to the Respondent’s basic operations, as “frivolous”. See Decision 23, Lines 22-39.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 120: The Respondent excepts to the Judge’s finding that its assertion that it was “going out of the business of janitorial services” was without merit. See Decision 24, Lines 30-35.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 121: The Respondent excepts to the Judge’s finding that janitorial services were never part of the Respondent’s business, because it did not offer janitorial services to customers or “otherwise maintain it as a business”. See Decision 24-25, Lines 41-43, 1-16.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 122: The Respondent excepts to the Judge’s findings rejecting the Respondent’s contention that the Union failed to bargain in good faith concerning the subcontracting of janitorial work by the Respondent. See Decision 24-25, Lines 20-21.

Grounds: The Judge’s findings are unsupported by the evidentiary record and legal precedent.

Exception No. 123: The Respondent excepts to the Judge’s finding that its arguments concerning the Union’s failure to bargain in good faith were not supported by any precedent. See Decision 25, Lines 1-2.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 124: The Respondent excepts to the Judge’s finding that the Respondent was required to restore the status quo with respect to the janitorial work in order to provide the Union with a true opportunity to bargain. See Decision 25, Lines 2-16.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 125: The Respondent excepts to the Judge's finding that the Respondent violated Sections 8(a)(5) and (1) of the Act by subcontracting bargaining unit work without bargaining in good faith with the Union. See Decision 25, Lines 18-20.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

IV. SECTION 8(A)(5) AND 8(A)(3): CHANGES TO JUNE / JULY 2019 PROFIT-SHARING PLAN PAYMENTS

Exception No. 126: The Respondent excepts to the Judge's findings that in June / July 2019 the profit-sharing plan payments that employees received were substantially reduced, and the Respondent told employees that union activity at the facility was the reason for the change to their payments. See Decision 25, Lines 26-28.

Grounds: The Judge's findings are unsupported by the evidentiary record.

Exception No. 127: The Respondent excepts to the Judge's finding that alleged changes to the profit-sharing plan violated Sections 8(a)(5) and (3) of the Act. See Decision 25, Lines 29-32.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 128: The Respondent excepts to the Judge’s finding that the Respondent “substantially reduced” the June / July 2019 profit-sharing plan payments without giving the Union notice or opportunity to bargain. See Decision 25, Lines 36-39.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 129: The Respondent excepts to the Judge’s finding that the Respondent argued that profit-sharing plan payments were a “mere” gift. See Decision 25, Lines 41-43.

Grounds: The Judge’s finding mischaracterizes the evidentiary record, and is unsupported by the evidentiary record.

Exception No. 130: The Respondent excepts to the Judge’s finding that the Respondent argued that profit-sharing plan payments were made with “no involvement” by the Respondent. See Decision 25, Lines 43-45.

Grounds: The Judge’s finding mischaracterizes the evidentiary record, and is unsupported by the evidentiary record.

Exception No. 131: The Respondent excepts to the Judge’s findings rejecting the Respondent’s assertion that the profit-sharing plan constituted a gift to employees. See Decision 26, Lines 1-24, FN 26.

Grounds: The Judge’s findings are unsupported by the evidentiary record and legal precedent.

Exception No. 132: The Respondent excepts to the Judge’s finding that “established Board law” did not support the Respondent’s argument that profit-sharing plan payments constituted a gift to employees. See Decision 26, Lines 1-5.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 133: The Respondent excepts to the Judge’s finding that, under the specific factual circumstances presented by the case, the profit-sharing plan payments did not constitute a gift to employees. See Decision 26, Lines 6-22.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 134: The Respondent excepts to the Judge’s findings that the amount of employees’ profit-sharing plan payments was determined by work-related factors that included the facility’s profits and employees’ earnings, which incorporated and were themselves dependent upon “work-related factors”. See Decision 26, Lines 14-18, 20-21.

Grounds: The Judge’s findings are unsupported by the evidentiary record.

Exception No. 135: The Respondent excepts to the Judge’s finding that it “is inconceivable” that profit-sharing payments could “be viewed as something less than terms and conditions of employment.” See Decision 26, Lines 19-22.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 136: The Respondent excepts to the Judge’s findings rejecting the Respondent’s reliance upon Bob’s Tire Co. See Decision 26, FN 26.

Grounds: The Judge’s finding are unsupported by the evidentiary record and legal precedent.

Exception No. 137: The Respondent excepts to the Judge’s finding that Bob’s Tire Co. provides further support for his finding that profit-sharing payments in the instant case were a term and condition of employment. See Decision 26, FN 26.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 138: The Respondent excepts to the Judge’s finding that the situation in the instant case is “exactly opposite” that presented by Bob’s Tire Co. See Decision 26, FN 26.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 139: The Respondent excepts to the Judge’s finding that the record shows that profit-sharing plan payments were tied to employment-related factors. See Decision 26, FN 26.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 140: The Respondent excepts to the Judge’s finding that the Respondent’s argument that it was not responsible for making the changes to the profit-sharing plan payments was “not persuasive”. See Decision 27, Lines 1-3.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 141: The Respondent excepts to the Judge’s finding that the Respondent was responsible for the changes to employees’ profit-sharing plan payments. See Decision 27, Lines 4-5.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 142: The Respondent excepts to the Judge’s finding that the Respondent violated Sections 8(a)(5) and (1) by changing the manner in which it calculated profit-sharing plan payments and reducing the amount of the June / July 2019 payments without first providing the Union with notice and an opportunity to bargain. See Decision 27, Lines 7-10.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 143: The Respondent excepts to the Judge’s finding that the General Counsel “easily met” his Wright Line burden. See Decision 27, Line 33.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 144: The Respondent excepts to the Judge’s findings that the evidence establishes that the Respondent bore animosity toward the Union, and that this animosity was connected to the decision to reduce employees’ June / July 2019 profit-sharing plan payments. See Decision 27, Lines 36-38.

Grounds: The Judge’s findings are unsupported by the evidentiary record and legal precedent.

Exception No. 145: The Respondent excepts to the Judge’s finding that Zilbauer identified Union activity as the reason for the change to payments. See Decision 27, Lines 38-40.

Grounds: The Judge’s finding mischaracterizes the evidentiary record and is unsupported by the evidentiary record.

Exception No. 146: The Respondent excepts to the Judge’s finding that Pozzobon informed employees that their payments had been reduced and changed because of the Union. See Decision 27, Lines 39-43.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 147: The Respondent excepts to the Judge’s finding that the timing of the alleged change to employees’ profit-sharing plan payments provides additional evidence of unlawful and discriminatory motive, because reductions were announced shortly after the Union election. See Decision 27-28, Lines 43-47, 1-7.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 148: The Respondent excepts to the Judge’s finding that the timing of the June / July 2019 profit-sharing plan payments would “suggest a discriminatory motive even if the Respondent’s agents had not openly admitted that union activity was the reason for the change.” See Decision 28, Lines 5-7.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 149: The Respondent excepts to the Judge’s findings that the General Counsel met its initial burden, and thus that the burden shifted to the Respondent to prove that it would have reduced employees’ profit-sharing plan payments in the absence of anti-union motivation. See Decision 28, Lines 9-12.

Grounds: The Judge’s findings are unsupported by the evidentiary record and legal precedent.

Exception No. 150: The Respondent excepts to the Judge’s findings that the Respondent “failed to articulate, much less provide evidence of, a non-

discriminatory explanation” for the alleged reduction in employees’ profit-sharing plan payments, and thus that the Respondent had not met its burden under Wright Line. See Decision 28, Lines 12-16.

Grounds: The Judge’s findings are unsupported by the evidentiary record and legal precedent.

Exception No. 151: The Respondent excepts to the Judge’s finding that the Respondent violated Sections 8(a)(3) and (1) of the Act by reducing employees’ profit-sharing plan payments because employees engaged in protected union activity. See Decision 28, Lines 18-20.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

V. SECTION 8(A)(3): RESPONDENT CEASES SHARING MONTHLY PROFIT INFORMATION WITH EMPLOYEES

Exception No. 152: The Respondent excepts to the Judge’s finding that “within days” of the Union election, the Respondent ceased its longstanding practice of displaying and sharing month profit information for the Niagara facility. See Decision 28, Lines 25-27.

Grounds: The Judge’s finding is unsupported by the evidentiary record.

Exception No. 153: The Respondent excepts to the Judge’s finding that employees used the information about the Niagara facility’s profits to estimate the amount of their profit-sharing plan payments. See Decision 28, Lines 27-29.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 154: The Respondent excepts to the Judge's findings that the General Counsel "easily met" its burden under Wright Line, and that the General Counsel had established animus toward the employee's protected activity. See Decision 28, Lines 25-36.

Grounds: The Judge's findings are unsupported by the evidentiary record and legal precedent.

Exception No. 155: The Respondent excepts to the Judge's finding that the Respondent's April 29, 2019 memorandum established the Respondent's animus against the Union. See Decision 28, Lines 34-40.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 156: The Respondent excepts to the Judge's finding that Laporte's statement to Cracknell, that the Respondent would no longer share profit information because there was a third party involved, established the Respondent's animus against the Union. See Decision 28, Lines 40-42.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 157: The Respondent excepts to the Judge's findings that the General Counsel met its burden under Wright Line, and that therefore, the burden

was shifted to the Respondent to show that it would have taken the same action absent the employees' protected conduct. See Decision 28, Lines 25-27.

Grounds: The Judge's findings are unsupported by the evidentiary record and legal precedent.

Exception No. 158: The Respondent excepts to the Judge's findings rejecting the Respondent's argument that its decision to cease posting profits was legitimate in light of the flyer disseminated by the Union. See Decision 28-29, Lines 46-47, 1-2.

Grounds: The Judge's findings are unsupported by the evidentiary record and legal precedent.

Exception No. 159: The Respondent excepts to the Judge's findings that if the flyer was part of the Union campaign, then the flyer was protected activity, and retaliating against employees for distribution would be unlawful. See Decision 29, Lines 2-4.

Grounds: The Judge's findings are unsupported by the evidentiary record and legal precedent.

Exception No. 160: The Respondent excepts to the Judge's finding that the evidence does not establish that the flyer was created or distributed by the Union. See Decision 29, FN 27.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 161: The Respondent excepts to the Judge's findings that the statements in the flyer were protected by the Act. See Decision 29, FN 28.

Grounds: The Judge's finding are unsupported by the evidentiary record and legal precedent.

Exception No. 162: The Respondent excepts to the Judge's findings that the statements in the flyer about Laporte were not false, reckless or maliciously false, but rather were mild and "expressed skepticism" about Laporte's academic achievements and attempted to "highlight" his personal spending and lifestyle. See Decision 29, FN 28

Grounds: The Judge's findings are unsupported by the evidentiary record.

Exception No. 163: The Respondent excepts to the Judge's findings that the fact that the Respondent's actions were motivated by the flyer did not tend to show lawful motive, but instead constituted additional proof that the Respondent was unlawfully motivated by employees' protected activity. See Decision 29, Lines 4-7.

Grounds: The Judge's findings are unsupported by the evidentiary record and legal precedent.

Exception No. 164: The Respondent excepts to the Judge's finding that the Respondent failed to show that, absent the Union campaign and the employees' decision to be represented by the Union, management would have reacted to the flyer by ceasing the practice of sharing facility profit information. See Decision 29, Lines 9-12.

Grounds: The Judge's finding is unsupported by the evidentiary record.

Exception No. 165: The Respondent excepts to the Judge’s finding that the flyer provided no basis for concluding that employees could not be trusted to respect limits on the disclosure of information the Respondent provided to them on a confidential basis. See Decision 29, Lines 18-21.

Grounds: The Judge’s finding mischaracterizes the Respondent’s arguments, and is unsupported by the evidentiary record.

Exception No. 166: The Respondent excepts to the Judge’s finding that the Respondent made no attempt to determine whether the Union played any part in the creation or distribution of the flyer. See Decision 29, Lines 22-23.

Grounds: The Judge’s finding mischaracterizes the evidentiary record and is unsupported by the evidentiary record.

Exception No. 167: The Respondent excepts to the Judge’s finding that the Respondent’s alleged failure to investigate the Union’s suspected involvement with the creation and distribution of the flyer supports an inference of discriminatory motive and “undermines” the Respondent’s defense. See Decision 29-30, Lines 23-25, 1-5.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

Exception No. 168: The Respondent excepts to the Judge’s finding, which rejected the Respondent’s argument, that the Complaint paragraph allegations concerning

the sharing of profit-sharing information were unproven by the General Counsel, as “disingenuous”. See Decision 30, FN 29.

Grounds: The Judge’s finding mischaracterizes the Respondent’s argument and is unsupported by legal precedent.

Exception No. 169: The Respondent excepts to the Judge’s finding that the Respondent discriminated in violation of Sections 8(a)(3) and (1) of the Act when it stopped sharing monthly profit information with employees because of their protected union activity. See Decision 30, Lines 7-9.

Grounds: The Judge’s finding is unsupported by the evidentiary record and legal precedent.

**VI. SECTION 8(A)(5): RESPONDENT FAILS TO PROVIDE
INFORMATION REQUESTED BY THE UNION REGARDING
PROFIT-SHARING PLAN**

Exception No. 170: The Respondent excepts to the Judge’s findings that the profit-sharing plan was a term and condition of employment for the unit employees and, therefore, the Union’s request for information about the plan was presumptively relevant. See Decision 31, Lines 2-5.

Grounds: The Judge’s findings are unsupported by the evidentiary record and legal precedent.

Exception No. 171: The Respondent excepts to the Judge’s finding that the Respondent violated Sections 8(a)(5) and (1) of the Act by refusing to provide the

information that the Union requested regarding the profit-sharing plan. See Decision 31, Lines 15-17.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

CONCLUSIONS OF LAW

Exception No. 172: The Respondent excepts to the Judge's finding that the Respondent violated Section 8(a)(1) of the Act when it told employees that their profit-sharing plan payments had been reduced and changed because of the union situation at the facility. See Decision 31, Lines 27-29.

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 173: The Respondent excepts to the Judge's findings that the Respondent violated Sections 8(a)(5) and (1) of the Act by failing to give the Union reasonable notice and an opportunity to bargain regarding the 2-week layoff; the subcontracting of bargaining unit janitorial work; and changes to the manner in which it calculated, and the amounts of, the June / July 2019 profit-sharing payments to employees. See Decision 31, Lines 31-35.

Grounds: The Judge's findings are unsupported by the evidentiary record and legal precedent.

Exception No. 174: The Respondent excepts to the Judge's finding that the Respondent violated Sections 8(a)(5) and (1) of the Act by refusing to provide the information that the Union requested regarding the profit-sharing plan. See Decision 31, Lines 37-39

Grounds: The Judge's finding is unsupported by the evidentiary record and legal precedent.

Exception No. 175: The Respondent excepts to the Judge's findings that the Respondent discriminated on the basis of employees' protected activity in violation of Sections 8(a)(3) and (1) of the Act by reducing employees' profit-sharing plan payments and ceasing to display, or otherwise share, monthly profit information for the Niagara facility. See Decision 31, Lines 41-44.

Grounds: The Judge's findings are unsupported by the evidentiary record and legal precedent.

Exception No. 176: The Respondent excepts to the Judge's finding that the alleged unfair labor practices affect commerce within the meaning of Sections 2(6) and (7) of the Act. See Decision 31, Lines 46-47.

Grounds: The Judge's finding that unfair labor practices were committed is unsupported by the evidentiary record and legal precedent.

REMEDY

Exception No. 177: The Respondent excepts to the Judge's remedy, ordering it to cease and desist from certain unfair labor practices and take certain affirmative action designed to effectuate the policies of the Act. See Decision 32, Lines 4-6.

Grounds: The Judge's remedy rests upon findings and conclusions that are unsupported by the evidentiary record and by applicable legal precedent.

Exception No. 178: The Respondent excepts to the Judge's remedy, ordering it to cease and desist from changing the terms and conditions of employees in the bargaining unit without first providing the Union with notice and an opportunity to bargain. See Decision 32, Lines 6-9.

Grounds: The Judge's remedy rests upon findings and conclusions that are unsupported by the evidentiary record and by applicable legal precedent.

Exception No. 179: The Respondent excepts to the Judge's remedy, requiring the Respondent to rescind the unilateral changes upon the Union's request, including the employee layoffs, the subcontracting of bargaining unit janitorial work, and the reductions to profit-sharing plan payments. See Decision 32, Lines 9-11.

Grounds: The Judge's remedy rests upon findings and conclusions that are unsupported by the evidentiary record and by applicable legal precedent.

Exception No. 180: The Respondent excepts to the Judge's remedy, ordering it to make employees whole for any losses of earnings and benefits suffered as a result of the alleged unlawful changes. See Decision 32, Lines 11-13.

Grounds: The Judge's remedy rests upon findings and conclusions that are unsupported by the evidentiary record and by applicable legal precedent.

Exception No. 181: The Respondent excepts to the Judge's remedy, ordering it to compute backpay in accordance with F.W. Woolworth Co., 90 NLRB 2889 (1950), with interest at the rate prescribed in New Horizons, 283 NLRB 1173 (1987), compounded daily, as prescribed in Kentucky River Medical Center, 356 NLRB 6 (2010). See Decision 32, Lines 13-16.

Grounds: The Judge's remedy rests upon findings and conclusions that are unsupported by the evidentiary record and by applicable legal precedent.

Exception No. 182: The Respondent excepts to the Judge's remedy, ordering it to file with the Social Security Administration a report allocating backpay to the appropriate calendar quarters and compensating employees for any adverse tax consequences pursuant to Latino Express, Inc., 359 NLRB No. 44 (2012). See Decision 32, Lines 16-20.

Grounds: The Judge's remedy rests upon findings and conclusions that are unsupported by the evidentiary record and by applicable legal precedent.

ORDER

Exception No. 183: The Respondent excepts to the Judge's recommended order, ordering it to cease and desist from coercing employees in the exercise of their rights under the Act by telling them that their profit sharing-plan payments have been reduced or changed because employees engaged in protected union activity. See Decision 32, Lines 30-34.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 184: The Respondent excepts to the Judge's recommended order, ordering it to cease and desist from refusing to display, and otherwise share with employees, monthly profit information for the Niagara facility. See Decision 32, Lines 36-37.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 185: The Respondent excepts to the Judge's recommended order, ordering it to cease and desist from changing the manner in which it calculates profit-sharing plan payments or reducing the amount of those payments to bargaining unit employees because employees engaged in protected union activity. See Decision 32-33, Lines 39-40, 1.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 186: The Respondent excepts to the Judge's recommended order, ordering it to cease and desist from changing the manner in which it calculates profit-sharing plan payments or reducing the amount of those payments to bargaining unit employees without bargaining in good faith with the Union. See Decision 33, Lines 3-5.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 187: The Respondent excepts to the Judge's recommended order, ordering it to cease and desist from laying off employees without bargaining in good faith with the Union over the layoff and the effects of the layoff. See Decision 33, Lines 7-8.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 188: The Respondent excepts to the Judge's recommended order, ordering it to cease and desist from subcontracting bargaining unit work without first bargaining in good faith with the Union. See Decision 33, Lines 10-11.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 189: The Respondent excepts to the Judge's recommended order, ordering it to cease and desist from refusing to provide the Union with information it requests that is necessary for and relevant to performance of its duties as exclusive collective-bargaining representative. See Decision 33, Lines 13-15.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 190: The Respondent excepts to the Judge's recommended order, ordering it to cease and desist from, in any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act. See Decision 33, Lines 17-18.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 191: The Respondent excepts to the Judge's recommended order, ordering it to make the bargaining unit employees whole, with interest, for the loss of earnings and other benefits, resulting from the 2 weeks of layoffs that began on May 20, 2019. See Decision 33, Lines 23-25.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 192: The Respondent excepts to the Judge's recommended order, ordering it to make the bargaining unit employees whole, with interest, for the loss

of earnings and other benefits suffered as a result of the decision to subcontract bargaining unit janitorial work after April 26, 2019. See Decision 33, Lines 27-29.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 193: The Respondent excepts to the Judge's recommended order, ordering it to make the bargaining unit employees whole, with interest, for the loss of earnings and other benefits suffered as a result of the unlawful changes to employee profit-sharing plan payments to unit employees. See Decision 33, Lines 31-33.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 194: The Respondent excepts to the Judge's recommended order, ordering it to display and share monthly profit information for the Niagara Falls facility in the manner this information was displayed and shared prior to the April 2019 union election. See Decision 33, Lines 35-37.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 195: The Respondent excepts to the Judge's recommended order, ordering it to rescind the unlawful changes made to the manner in which it calculates profit-sharing plan payments to unit employees. See Decision 33, Lines 39-40.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 196: The Respondent excepts to the Judge's recommended order, ordering it to provide the Union with the information sought in the Union's requests of August 16, August 26, and September 3, 2019. See Decision 33, Lines 42-43.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 197: The Respondent excepts to the Judge's recommended order, ordering it to preserve and, within fourteen (14) days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order. See Decision 33-34, Lines 45-48, 1-3.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 198: The Respondent excepts to the Judge's recommended order, ordering it to, within fourteen (14) days after service by the Region, post at its facility

in Niagara Falls for sixty (60) consecutive days, a signed copy of the Notice attached to the Judge's Decision as the Appendix. See Decision 34, Lines 5-10.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 199: The Respondent excepts to the Judge's recommended order, ordering it to, within fourteen (14) days after service by the Region, distribute electronically a signed copy of the Notice attached to the Judge's Decision as the Appendix, if the Respondent normally communicates with its employees by such means. See Decision 34, Lines 10-13.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 200: The Respondent excepts to the Judge's recommended order, ordering it to, within twenty-one (21) days after service by the Region, file with the Regional Director a sworn certification attesting to the steps that the Respondent has taken to comply with the Judge's recommended order. See Decision 34, Lines 21-23.

Grounds: The Judge's recommended order rests upon findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Exception No. 201: The Respondent excepts to the entirety of the Appendix and recommended Notice appended to the Judge's Order.

Grounds: The Appendix and recommended Notice rest upon the Judge's findings and conclusions that are unsupported by the evidentiary record and applicable legal precedent.

Dated: May 4, 2020
Katonah, NY

Respectfully Submitted,

Don T. Carmody

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CASCADES CONTAINERBOARD	:	Case No. 03-CA-242367
PACKAGING - NIAGARA, A DIVISION OF	:	03-CA-243854
CASCADES HOLDING US, INC.	:	03-CA-248951
	:	
<i>and</i>	:	
	:	
INTERNATIONAL ASSOCIATION OF	:	
MACHINISTS AND AEROSPACE WORKERS	:	
DISTRICT LODGE 65, AFL-CIO	:	

CERTIFICATE OF SERVICE

The Undersigned, Don T. Carmody, Esq., being an attorney duly admitted to the practice of law, do hereby certify, pursuant to 28 U.S.C. § 1746, that I e-filed, on May 4, 2020, on behalf of Cascades Containerboard Packaging – Niagara, a Division of Cascades Holding US, Inc. (Respondent”), the original of “Respondent’s Exceptions to Decision of Administrative Law Judge Paul Bogas” (“Respondent’s Exceptions”), together with the original of “Respondent’s Brief in Support of Respondent’s Exceptions to Decision of Administrative Law Judge Paul Bogas” (Respondent’s Brief in Support of Exceptions”) *via* the National Labor Relations Board website, www.nlrb.gov, with the following:

Hon. Roxanne L. Rothschild, Executive Secretary
National Labor Relations Board
1015 Half Street S.E.
Washington, D.C. 20570

As an attorney duly admitted to the practice of law, I do hereby further certify, pursuant to 28 U.S.C. § 1746, that I e-filed a copy of the Respondent's Exceptions and Respondent's Brief in Support of Exceptions with the following *via* the National Labor Relations Board's website, www.nlrb.gov, on May 4, 2020:

Hon. Paul J. Murphy, Regional Director,
Acting for the General Counsel
National Labor Relations Board, Region 3
130 South Elmwood Avenue
Suite 630
Buffalo, New York 14202-2465

As an attorney duly admitted to the practice of law, I do hereby further certify, pursuant to 28 U.S.C. § 1746, that I e-mailed a copy of the Respondent's Exceptions and Respondent's Brief in Support of Exceptions to the following on May 4, 2020:

Nicholas A. Scotto, Special Representative
26 Court Street
Suite 1710
Brooklyn, New York 11242
nsotto@iamaw.org

Dated: May 4, 2020
Katonah, NY

Respectfully Submitted,



Don T. Carmody
Carmen M. DiRienzo

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